IN THE

Supreme Court of the United States

October Term, 1980

No. 80-348

H.A. ARTISTS & ASSOCIATES, INC., et al.,

Petitioners,

against

ACTORS' EQUITY ASSOCIATION,
an unincorporated association, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, SCREEN ACTORS GUILD, INC., WRITERS GUILD OF AMERICA, WEST, INC., AND WRITERS GUILD OF AMERICA, EAST, INC., AS *AMICI CURIAE*, IN SUPPORT OF RESPONDENTS

DAVID ALTER
(Counsel of Record)
JOSEPH FERRARO
YEE WAH CHIN
SHEA & GOULD
330 Madison Avenue
New York, New York 10017
(212) 661-3200

Attorneys for Screen Actors Guild, Inc., as *Amicus Curiae*

MORTIMER BECKER
BECKER & LONDON
15 Columbus Circle
New York, New York 10023
(212) 541-7070

HENRY KAISER
RONALD ROSENBERG
VAN ARKEL, KAISER & ROSENBERG
1828 L Street, N.W., Suite 701
Washington, D.C. 20036
(202) 466-8400

Attorneys for American Federation of Television and Radio Artists, as *Amicus Curiae*

PAUL P. SELVIN
SELVIN AND WEINER, P.C.
1900 Avenue of the Stars, Suite 2400
Los Angeles, California 90067
(213) 277-1555

Attorneys for Writers Guild of America, West, Inc. and Writers Guild of America, East, Inc., as *Amici Curiae*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

BRIEF, AS *Amici Curiae* 1

Interest of the *Amici Curiae* 2

Summary of Argument 3

ARGUMENT 6

POINT I —TALENT AGENTS PERFORM FUNCTIONS DIRECTLY AFFECTING TERMS AND CONDITIONS OF EMPLOYMENT; UNION REGULATION OF THEIR MEMBERS' RELATIONSHIPS WITH TALENT AGENTS IS NECESSARY AND LAWFUL 6

A. A Dispute Concerning Union Regulation of Agents Constitutes a "Labor Dispute" as Expressly Defined in the Norris-La Guardia Act and is Therefore Outside the Reach of the Antitrust Laws 6

B. The History of the Entertainment Unions' Regulation of Their Members' Relationships With Agents Demonstrates the Need for Those Union Regulations and Their Legality 8

POINT II —EQUITY'S REGULATIONS ARE INDISTINGUISHABLE FROM THOSE IN *CARROLL* AND ARE LIKEWISE WITHIN THE LABOR EXEMPTION TO THE ANTITRUST LAWS 15

A. This Court Found in *Carroll* that Regulations Similar to Those Involved Here are "Intimately Related to Wages" and Exempt from the Antitrust Laws 15

B. Petitioners' Attempts to Distinguish *Carroll* are Both Inaccurate and Unpersuasive 17

Page

POINT III —*STARE DECISIS* DICTATES THAT *CARROLL* NOT BE OVERRULED 20

A. This Court's Precedents Should Not Be Overruled Without Overwhelming Reason To Do So 20

B. Congress has Approved *Carroll*'s Construction of the Labor Exemption to the Antitrust Laws 22

C. Overruling *Carroll* Would Violate the Core Principles of *Stare Decisis* and Would Disrupt Industry Practices Adopted and Maintained in Reliance Upon Judicial Approval 22

D. Overruling *Carroll* Will Severely Undermine the Court's Consistent Line of Authority on this Issue 24

E. Petitioners Offer No Reason to Overrule *Carroll* 25

CONCLUSION 26

TABLE OF AUTHORITIES

Page

Cases:

Adams v. *Tanner,* 244 U.S. 590 (1917) (Brandeis, Holmes, Clarke, JJ., dissenting), *overruled, Ferguson* v. *Skrupa,* 372 U.S. 726 (1963) 11, 18

Adams, Ray & Rosenberg v. *William Morris Agency, Inc.,* 411 F. Supp. 403 (C.D. Ca. 1976) 14, 18, 23

Allen Bradley Co. v. *Local Union No. 3, International Brotherhood of Electrical Workers,* 325 U.S. 797 (1945) 24

American Federation of Musicians of the United States and Canada v. *Carroll,* 391 U.S. 99 (1968).....3-8, 13, 15-20, 22-25

Apex Hosiery Co. v. *Leader,* 310 U.S. 469 (1940) 24

Burnet v. *Coronado Oil & Gas Co.,* 285 U.S. 393 (1932) (Brandeis, J., dissenting) 21

Carroll v. *American Federation of Musicians of the United States and Canada,* 372 F.2d 155 (2d Cir. 1967), *vacated,* 391 U.S. 99 (1968) ..4, 17, 19

Carroll v. *American Federation of Musicians of the United States and Canada,* 241 F. Supp. 865 (S.D.N.Y. 1965), *aff'd in part and rev'd in part,* 372 F.2d 155 (2d Cir. 1967), *vacated,* 391 U.S. 99 (1968).....3-4, 13, 16-19

Connell Construction Co. v. *Plumbers & Steamfitters Local Union No. 100,* 421 U.S. 616 (1975) 5, 8

Corporate Printing Co. v. *New York Typographical Union No. 6,* 555 F.2d 18 (2d Cir. 1977) .. 8

Edelman v. *Jordan,* 415 U.S. 651 (1974) 21

Edelstein v. *Gillmore,* 35 F.2d 723 (2d Cir. 1929), *cert. denied,* 280 U.S. 607 (1930)..4, 12-13, 16, 18-20, 23

	Page
Ex-parte Crane, 5 Pet. (30 U.S.) 190 (1831)	25
Garrett v. *American Federation of Musicians*, 78-1 (CCH) Trade Cas. ¶ 61,888 (D.S.C. 1978)	18, 23
Gilman v. *Philadelphia*, 3 Wall. (70 U.S.) 713 (1866)	21
H.A. Artists & Associates, Inc. v. *Actors' Equity Association*, 622 F.2d 647 (2d Cir. 1980).....	4, 8, 16
H.A. Artists & Associates, Inc. v. *Actors' Equity Association*, 478 F. Supp. 496 (S.D.N.Y. 1979), *aff'd*, 622 F.2d 647 (2d Cir. 1980).....	8, 16-17
Helvering v. *Hallock*, 309 U.S. 106 (1940)	21
Houston Chapter, Associated General Contractors, 143 N.L.R.B. 409 (1963), *enforced*, 349 F.2d 449 (5th Cir. 1965), *cert. denied*, 382 U.S. 1026 (1966)	23-24
Illinois Brick Co. v. *Illinois*, 431 U.S. 720 (1977).	22
Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America v. *National Labor Relations Board*, 365 U.S. 667 (1961)	10, 24
Local 24, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO v. *Oliver*, 358 U.S. 283 (1959)	24
Local Union No. 189, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO v. *Jewel Tea Co., Inc.*, 381 U.S. 676 (1965) (White, J.)	25
Los Angeles Meat & Provision Drivers Union v. *United States*, 371 U.S. 94 (1962)	24, 25
Milk Wagon Drivers' Union, Local No. 753 v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91 (1940)	8
Moragne v. *States Marine Lines, Inc.*, 398 U.S. 375 (1970)	21
New Negro Alliance v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938)	8
Olsen v. *Nebraska*, 313 U.S. 236 (1941)	12

Page

Redfield v. *American Federation of Musicians,* Civ. 78-7530, 603 F.2d 214 (2d Cir. 1979). 18, 22-23

Ribnik v. *McBride,* 277 U.S. 350 (1928) (Stone, Holmes, Brandeis, JJ., dissenting), *overruled, Olsen* v. *Nebraska,* 313 U.S. 236 (1941) 11-12

Thomas v. *Washington Gas Light Co.,* — U.S. —, 100 S. Ct. 2647 (1980)..... 5, 20-21

United Mine Workers of America v. *Pennington,* 381 U.S. 657 (1965) 22, 25

United States v. *Hutcheson,* 312 U.S. 219 (1941) .. 22, 24

Utilities Services Engineering, Inc. v. *Colorado Building & Construction Trades Council,* 549 F.2d 173 (10th Cir. 1977) 8

Statutes:

Ca. Labor Code § 1700 14

Clayton Act, 15 U.S.C. § 17; 29 U.S.C. § 52 ..... 5, 24

National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.* 23

Norris-La Guardia Act, 29 U.S.C. §§ 101-15 ..... 3, 5-8, 22, 24

Other:

Harding, Alfred, *The Revolt of the Actors* (1929), J.A. 291 ..... 9, 12, 16-17

New Republic, October 24, 1928 10

New York Times, September 24, 1928 9

Report of Commission on Industrial Relations, 64th Cong., 1st Sess., Sen. Doc. No. 415..... 11

Staff Report to the Federal Trade Commission, *Talent and Modeling Agencies in Southern California,* September 1972 14

United States Bureau of Labor Bulletin No. 109. 11

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-348

H. A. ARTISTS & ASSOCIATES, INC., et al.,
Petitioners,

against

ACTORS' EQUITY ASSOCIATION,
an unincorporated association, et al.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF OF AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, SCREEN ACTORS GUILD, INC., WRITERS GUILD OF AMERICA, WEST, INC., AND WRITERS GUILD OF AMERICA, EAST, INC., AS *AMICI CURIAE*, IN SUPPORT OF RESPONDENTS

American Federation of Television and Radio Artists ("AFTRA"), Screen Actors Guild, Inc. ("SAG"), Writers Guild of America, West, Inc., and Writers Guild of America,

East, Inc. (together "WGA") submit this brief, as *amici curiae,* in support of respondent Actors' Equity Association ("Equity"), in order to advise the Court as to their interest in this controversy and their position on the issues raised.[1] The *amici curiae* hereby adopt the Statement of Facts set forth in the brief of respondent Equity.

INTEREST OF THE *AMICI CURIAE*

SAG, AFTRA and WGA[2] all have long-standing regulations and by-laws similar to those of Equity, instructing members to deal only with agents who have agreed with the unions to treat their members fairly.[3] The background leading to the adoption of such regulations and by-laws is set forth below (pp. 8-14). Indeed, all "entertainment" unions found it necessary to promulgate such regulations because experience had shown that, without such union regulations, the activities of agents had deleterious effects on wages and other conditions of employment for actors, writers and others ("performers").

This brief is filed to demonstrate to the Court how economic necessities prompted these entertainment unions to regulate the relationships between their members and talent agents. The circumstances surrounding the adoption of agent regulations underscore the lower courts' findings that they protect the wages and working conditions of the members of

---

[1] Pursuant to Rule 36.2 of the Rules of this Court, written consents by all parties to the filing of this brief have been obtained and are being filed with the Clerk of the Court concurrently with this brief.

[2] SAG represents performers engaged in the motion picture and television industries. AFTRA represents the interests of artists engaged in television and radio. WGA represents motion picture and television writers. All are certified labor organizations under Title 29 of the United States Code.

[3] Rule 16(g) of Rules and Regulations of Screen Actors Guild ("SAG Agency Regulations Rule 16(g)"); AFTRA Rule 12(b); WGA Working Rule No. 23.

the entertainment unions and are, therefore, protected under the labor exemption to the antitrust laws.

We urge the Court to reaffirm its holding in *American Federation of Musicians of the United States and Canada* v. *Carroll,* 391 U.S. 99, 113 (1968), which clearly governs the instant case, to provide continued stability by adhering to the principles of *stare decisis,* and to affirm the unanimous decisions of the courts below.

SUMMARY OF ARGUMENT

This Court concluded in *American Federation of Musicians* v. *Carroll,* 391 U.S. 99, 113 (1968), that booking agent regulations similar to those challenged here are " 'intimately bound up with the subject of wages,' *Oliver II, supra,* at 606," and are therefore within the labor exemption from the antitrust laws. This Court expressly affirmed (391 U.S. at 113) the finding of the trial court (241 F. Supp. 865, 893) that the union and the agents were parties to a labor dispute since "[agents] are in an economic interrelationship with the members . . . such that the [unions] are justified in regulating their activities." Since (1) the agents' impact on wages justified union regulation, (2) disputes about such regulations were labor disputes and (3) "[t]he Norris-LaGuardia Act took all 'labor disputes' as therein defined outside the reach of the Sherman Act" (391 U.S. at 106), disputes about the union's agent regulations were therefore beyond the reach of the antitrust laws.

No clearer definition of the agent's function can be drafted than that in the Norris-La Guardia Act's list of activities which may be the subject of a labor dispute: "representation of persons in...seeking to arrange terms or conditions of employment." 29 U.S.C. § 113. Agents "arrange terms and conditions of employment." Under the statutory definition, therefore, disputes involving agents' activities are labor disputes, and a union's regulation of its members' relationships with agents is "outside the reach of the Sherman Act." *Carroll,* 391 U.S. at 106.

The history of the entertainment unions' struggle with agents who charged exorbitant commissions which were often rebated to the employer, and the nature of the entertainment industry, demonstrate beyond doubt, and all the courts which have considered the question have agreed, that agents directly and vitally affect the wages and working conditions of performers. Equity's regulations, first adopted in 1928, received authoritative judicial approval. *Edelstein* v. *Gillmore,* 35 F.2d 723 (2d Cir. 1929), *cert. denied,* 280 U.S. 607 (1930). Judge Swan in *Edelstein* v. *Gillmore* found that Equity's regulations were lawfully "calculated . . . to improve conditions of employment of actors." These findings characterize and illuminate the legality of the regulations adopted by the entertainment unions in the period following *Edelstein* v. *Gillmore.* For reasons similar to those of Equity, and in reliance on the judicial approval in *Edelstein* v. *Gillmore* of Equity's regulations, other entertainment unions soon adopted comparable rules. The *amici,* like Equity, concluded that regulation was a necessary device to eradicate the abuses of the agent system and, in view of *Edelstein* v. *Gillmore,* a lawful method of doing so. *Carroll* confirmed the legality of such regulations and assured these unions that maintenance of those long-standing union rules would not subject them to antitrust liability.

The court below rejected petitioners' strained attempts to distinguish *Carroll,* finding that "the union cannot eliminate wage competition among its members without regulation of the fees of the agents." 622 F.2d 647, 651. In their brief to this Court, petitioners misstate the opinions and evidence in *Carroll* and rely on claimed distinctions that would not, even if true, justify a different result. For example, petitioners' primary claim — that the American Federation of Musicians ("AFM") did not regulate agents in fields where it had collective agreements — is both untrue[4] and irrelevant. Nowhere do petitioners present reasons why these claimed distinctions dictate a different result. There are none.

---

[4] 241 F. Supp. at 881, 883-84; 372 F.2d 155, 158-59.

Nor have petitioners shown any justification for this Court to ignore *stare decisis* by accepting petitioners' invitation to overrule *Carroll*. *Stare decisis* provides stability in the application of legal rules and imposes a "severe burden on the litigant who asks [the Court] to disavow one of [its] precedents." *Thomas* v. *Washington Gas Light Co.*,—U.S.—, 100 S. Ct. 2647, 2656 (1980). Petitioners do not seriously attempt to meet that burden. No supervening decision of this Court nor any other court casts doubt on *Carroll*'s viability; the one subsequent decision by this Court in this area cites *Carroll* approvingly: *Connell Construction Co.* v. *Plumbers & Steamfitters Local Union No. 100,* 421 U.S. 616, 622 (1975). The lower courts have followed *Carroll* faithfully and without difficulty.

On the other hand, overruling *Carroll* would violate the core principles of *stare decisis* by victimizing those unions which have acted in accordance with settled legal principles and would disrupt the entire entertainment industry. Reversal of *Carroll* and its judicial antecedents and progeny (1) would shatter long-standing union practices adopted some fifty years ago in reliance on explicit judicial approval, (2) would spawn extensive litigation in an area hitherto free of controversy, and (3) could create labor strife since entertainment unions would be compelled to seek contractual hiring procedures and to assume the agents' negotiating role. Proper deference to the salutary purposes of *stare decisis* demands rejection of petitioners' flimsily supported invitation to this Court to abandon controlling precedent.

Finally, adherence to *stare decisis* is especially compelling since *Carroll* is consistent with the clear line of decisions by this Court. See cases cited, 391 U.S. at 106. This Court has repeatedly declared that the Clayton and Norris-La Guardia Acts were intended to foreclose judicial scrutiny of union activities undertaken in self-interest. Only when a union joins a business conspiracy or combines with business interests to restrain product competition may its activities be challenged. To overrule *Carroll* would also undermine this line of precedents.

Equity's regulation of agents furthers the legitimate union goal of improving members' working conditions and compensation. Equity and the other entertainment unions have not sought to restrain competition among agents and clearly have no economic incentive to do so. The interests of entertainment union members are best served by robust competition among agents, and there is no shred of evidence in this or any other case that the entertainment unions have abandoned those legitimate interests in order to limit such competition, or to benefit agents who submit to union regulations. Thus, under *Carroll* and earlier supporting authority, the agent regulatory systems of the entertainment unions should remain exempt from the antitrust laws.

ARGUMENT

POINT I

TALENT AGENTS PERFORM FUNCTIONS DIRECTLY AFFECTING TERMS AND CONDITIONS OF EMPLOYMENT; UNION REGULATION OF THEIR MEMBERS' RELATIONSHIPS WITH TALENT AGENTS IS NECESSARY AND LAWFUL.

A. A Dispute Concerning Union Regulation of Agents Constitutes a "Labor Dispute" as Expressly Defined in the Norris-La Guardia Act and is Therefore Outside the Reach of the Antitrust Laws

In *American Federation of Musicians* v. *Carroll,* 391 U.S. 99, 106 (1968), this Court held that:

> The Norris-La Guardia Act took all "labor disputes" as therein defined outside the reach of the Sherman Act and established that the allowable area of union activity was not to be restricted to an immediate employer-employee relation. *United States* v. *Hutcheson,* 312 U.S. 219, 229-236, *Allen Bradley* v. *Union, supra,* at 805-806; *Los Angeles*

> *Meat & Provision Drivers Union* v. *United States, supra,* at 103; *Milk Wagon Drivers' Union* v. *Lake Valley Farm Prods.,* 311 U.S. at 91.

Since the activities of the booking agents were "intimately bound up with the subject of wages" (391 U.S. at 113), the agents, albeit independent contractors and outside the immediate employer-employee relationship, were still parties to a "labor dispute" within 29 U.S.C. § 113. Consequently, the union could regulate the booking agents' activities and those regulations were exempted from the antitrust laws.

No clearer definition of the agent's function can be designed than that in the Norris-La Guardia Act's definition of a labor dispute. Section 13, 29 U.S.C. § 113, defines a "labor dispute" as including any controversy concerning:

> representation of persons in negotiating, fixing, maintaining, changing, or *seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.* (Emphasis added.)

Agents "arrange terms and conditions of employment" for performers. One need go no further than the statutory definition of a labor dispute to ascertain that a dispute concerning a union's regulation of its members' dealings with agents comes squarely within the labor exemption to the antitrust laws.

Since agents perform tasks traditionally performed by unions, it is not merely coincidental that the Norris-La Guardia definition of labor dispute precisely includes disputes relating to activities identical to the agents' functions. The agent negotiates, as do unions; the agent obtains jobs, as do unions through hiring halls and other mechanisms; the agent presents the performer's grievances to the employer, a traditional union function. In acting as a surrogate for the unions and as a representative of their members, the agent may indisputably become a party to a labor dispute and union regulation of

agents is therefore "outside the reach of the Sherman Act." *Carroll,* 391 U.S. at 106.[5]

In addition, petitioners here seek *only* injunctive relief and this highlights the controlling force of the Norris-La Guardia Act in this case. For this Court has never deviated from the incontrovertible proposition that injunctions are precluded in cases involving labor disputes. See, *e.g., Milk Wagon Drivers' Union, Local No. 753* v. *Lake Valley Farm Products, Inc.,* 311 U.S. 91, 101, 103 (1940); *New Negro Alliance* v. *Sanitary Grocery Co.,* 303 U.S. 552, 560-62 (1938). Whatever the result may be where plaintiffs seek other relief, the demand for injunctive relief alone must fail where the litigants are parties to a labor dispute.[6]

B. The History of the Entertainment Unions' Regulation of Their Members' Relationships With Agents Demonstrates the Need for Those Union Regulations and Their Legality

A review of the origins of the entertainment unions' regulation of agents demonstrates that such regulations were and are needed to protect performers' wages and working

---

[5] Petitioners' claim that agents have no greater "economic interrelationship," in the Norris-La Guardia sense, with performers than with landlords or grocers ignores the statutory definition of a labor dispute. Congress has made it clear that agents may be parties to a labor dispute; it has not done so with respect to landlords and grocers. The lower courts here correctly found, moreover, that agents' "commissions are directly and proportionately related to wages." 478 F. Supp. 496, 504; 622 F.2d 647, 650.

[6] *Lake Valley* has never been overruled. See extended discussion in *Utilities Services Engineering, Inc.* v. *Colorado Building & Construction Trades Council,* 549 F.2d 173 (10th Cir. 1977). In *Connell Construction Co.* v. *Plumbers & Steamfitters Local Union No. 100,* 421 U.S. 616, 637 (1975), this Court noted that the jurisdictional issue was not present since the plaintiffs there, unlike the petitioners in the present case, had sought a declaratory judgment. *Cf., Corporate Printing Co.* v. *New York Typographical Union No. 6,* 555 F.2d 18 (2d Cir. 1977). Here, however, petitioners seek only injunctive relief banned by the Norris-La Guardia Act, and *Lake Valley* compels the conclusion that the federal courts lack jurisdiction.

conditions, and that they were and are consequently legal. That history shows that the regulations addressed universally acknowledged abuses, were unilaterally adopted after careful consideration, without intent to restrain business competition, and were instituted in reliance upon express, authoritative precedent upholding the legality of the earlier Equity regulations.

Prior to union regulation of talent agents, members often worked for less than the unions' minimum wage scales because of the amounts exacted from them by agents in order to obtain those very jobs. Agents frequently rebated part of the monies they received from the performer-employee to the employer[7] — a patent evasion of the union's negotiated wage structure; they

---

[7] A. Harding, *The Revolt of the Actors* (1929), Joint Appendix ("J.A.") 291, 315, 317. Reports from contemporary periodicals and newspapers detailed those abuses. See, *e.g.*, "New Rules for Actors", *New York Times*, September 24, 1928, at 20, col. 3:

> Certain managers . . . have turned the casting of their plays over to an agent who has been required to pay them for the privilege. In such cases, an actor who signed a contract at $100 a week would be paying $5 weekly to the agent and an additional $5 weekly to the manager for the run of the play. This would be in addition to the two payments to the agency before he could go to work.
>
> Equity had hoped that the New York law governing employment agencies could be invoked to correct these conditions, but has now given up that idea. It will deal with them through its remarkable control over its own members. The regulations adopted last week are aimed to remedy injustice to the actor. They provide for the fair treatment of him which was intended under the law. Refusing to allow Equity members to deal with agents who do not comply with Equity's requirements compels obedience. Under circumstances highly favorable to the actor an agent may act as a personal representative. Under no circumstances will he be permitted to split his fees with managers or producers.
>
> The power of the actors' union appears to be used here with the discretion and control for which it has been notable since its origin. People outside the theatre might imagine that an actor out of work could scorn an agent's services and go directly to the producer, but there are more players than positions, and producers have found it convenient and not at all expensive to use agents.

(continued)

often assumed the dual roles of casting director for the employer and agent for the employee. In these and other ways, the activities of agents thwarted the unions' legitimate efforts to improve the terms and conditions of their members' employment.

The detrimental impact of talent agents prior to union regulation mirrored similar abuses in other fields by employment agents who extracted payments from job-hungry workers seeking employment. Even today, farm workers and others continue to be victimized by so-called "contractors" who, like talent agents prior to union regulation, control access to jobs and extort disproportionate fees, often rebating portions of those fees to the employer. Most unions representing casual, transient workers, *e.g.*, construction and maritime workers, have attempted to cure this problem through the establishment of hiring halls.[8]

(continued)

See also, *The New Republic,* October 24, 1928, at 263:

> The grievances which [Equity] seeks to cure are of long standing. Agencies have, of course, a legitimate service to perform in relation to the employment of actors and actresses. It is their business to discover what openings there are for actors and what actors are available to fill them. They bring the actor and the manager together, and if the actor is their client, they give him advice in negotiating his bargain with the manager. But the business is obviously one which lends itself to chicanery and abuse . . . [Agents] have demanded 10 percent or more of the actor's salary for the entire run of the engagement, and they have usually succeeded in enforcing the demand. They were able to enforce it because several important producing firms would not hire actors or actresses except through designated agents, in which case the producer himself received a percentage of the commission. He managed in this way to extort perhaps a 5 percent rebate on the salary which he had agreed to pay the performer.

[8] See, *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *National Labor Relations Board,* 365 U.S. 667, 672-74 (1961), noting the authorities to the effect that such mechanisms "ha[ve] served well both labor and management," and quoting Senator Taft that "[t]he employer should be free to make a contract with the union as employment agency. The union frequently is the best employment agency."

These abuses had sparked extensive governmental inquiry and attempts at correction as early as 1890,[9] and in the year preceding Equity's adoption of its regulations, Mr. Justice Stone outlined those abuses that had particularly aroused governmental concern with employment agencies, abuses identical to those that compelled Equity and other entertainment unions to protect their members by regulating agents. *Ribnik* v. *McBride,* 277 U.S. 350, 359-75 (1928) (Stone, Holmes, Brandeis, JJ., dissenting). Justice Stone noted that exhaustive governmental studies[10] showed that, *inter alia:* (1) "the agencies, left to themselves, very generally charge extortionate fees" (277 U.S. at 365); (2) "[f]ee-splitting [with the employer] has been a recurrent subject of complaint" (*id.* at 367); and (3) "at times of widespread unemployment the private agencies are known to raise their fees out of all proportion to the reasonable value of their services" (*id.* at 368).

Unfortunately, governmental regulations had proven so haphazard and ineffective as to have been described as "a miserable failure" as early as 1914,[11] and, indeed, despite the undisputed abuses, the majority in *Ribnik* v. *McBride* com-

---

[9] "The evils incident to private employment agencies first arrested public attention in America about 1890." *Adams* v. *Tanner,* 244 U.S. 590, 600 (1917) (Brandeis, Holmes, Clarke, JJ., dissenting), *overruled, Ferguson* v. *Skrupa,* 372 U.S. 726 (1963). In that classic opinion, Mr. Justice Brandeis described in detail the abuses of workers by private employment agencies and the exhaustive governmental investigations and studies of the problem, noting that the abuses by employment agencies had been summarized in United States Bureau of Labor Bulletin No. 109, p. 36. *Id.* at 601. Justice Brandeis quoted and described other voluminous studies to the same effect in the United States and other countries. *Id.* at 602-05.

[10] "For thirty years or more the evils found to be connected with the business of employment agencies in the United States have been the subject of repeated investigations, official and unofficial, and of extensive public comment." 277 U.S. at 363. Justice Stone cited extensively from the contemporary literature, including, *inter alia,* the report to the Congress of the Commission on Industrial Relations, 64th Cong., 1st Sess., Sen. Doc. No. 415. *Id.* at 364-68.

[11] *Adams* v. *Tanner,* 244 U.S. at 605.

pletely emasculated existing attempts at state regulation by holding New Jersey's regulation of agents to be outside the state's constitutional authority.[12]

The majority's holding in *Ribnik* v. *McBride* created a vacuum in the regulation of agents and "removed the last faint, lingering scruple from [theatrical] agencies which had made a gesture of obedience [to state Law]."[13] These consequences prompted Equity to adopt by-laws regulating agents.[14] Equity attempted with these by-laws to cure the very abuses summarized by Mr. Justice Stone in *Ribnik* v. *McBride, e.g.,* excessive commissions and fee-splitting with the employer by the talent agent.[15]

The system established by Equity's regulations, essentially identical to the present system, was immediately challenged. In *Edelstein* v. *Gillmore,* 35 F.2d 723 (2d Cir. 1929), *cert. denied,* 280 U.S. 607 (1930), Judge Swan, writing for himself and Judge Augustus N. Hand, concluded that Equity's agent regulations were a lawful effort to improve the employment conditions of its members. The Second Circuit found that:

> *The evils of unregulated employment agencies (using this term broadly to include also the personal representative) are set forth in the defendants' affidavits and are corroborated by common knowledge* . . . Hence the requirement that, as a condition to writing new business with Equity's members, old contracts with its members must be made to conform to the new standards, does not seem to us to justify an

---

[12] That holding was subsequently overruled unanimously. *Olsen* v. *Nebraska,* 313 U.S. 236 (1941).

[13] Harding, *The Revolt of the Actors,* J.A. at 322-25. As that author notes, those governmental regulations had proved ineffective even prior to *Ribnik* v. *McBride* and had not been uniformly adopted nor enforced by the states. *Ibid.,* J.A. at 314, 316, 319. The affidavits submitted by Equity in *Edelstein* v. *Gillmore,* 35 F.2d 723 (2d Cir. 1929), *cert. denied,* 280 U.S. 607 (1930), also substantiate the ineffectiveness of governmental regulation, and describe Equity's decision that union regulation was necessary.

[14] Harding, *The Revolt of the Actors,* J.A. at 322-23.

[15] *Ibid,* J.A. at 323-25.

> inference that the primary purpose of the requirement is infliction of injury upon plaintiff, and other personal representatives in a similar situation, rather than the protection of the supposed interests of Equity's members. *The terms they insist upon are calculated to secure from personal representatives better and more impartial service, at uniform and cheaper rates, and to improve conditions of employment of actors by theater managers.* Undoubtedly the defendants intend to compel the plaintiff to give up rights under existing contracts which do not conform to the new standards set up by Equity, but, as already indicated, *their motive in so doing is to benefit themselves and their fellow actors in the economic struggle.* The financial loss to plaintiff is incidental to this purpose.

35 F.2d at 726 (emphasis added). This Court denied *certiorari,* 280 U.S. 607 (1930).

With the legality of Equity's actions established by *Edelstein* v. *Gillmore,* other entertainment unions soon adopted agent regulations comparable to those found lawful in *Edelstein* v. *Gillmore.* The AFM adopted similar internal membership rules in 1936, instructing its members to deal only with agents whose activities did not adversely affect the terms and conditions of employment of those members. Those regulations were adopted only after extensive study of the problem by the AFM and, in essentially the same form, were upheld by the Court in *Carroll.* 241 F. Supp. 865, 881-82, 892-93; 391 U.S. at 113.

SAG too emulated the Equity rules legitimized in *Edelstein* v. *Gillmore,* and, in 1939, adopted similar rules. Again, this action was taken only after lengthy consideration of agent abuses. SAG's Executive Committee had commenced study of the issue by November 1937, when it was reported to the committee that numerous complaints relating to agents had been received. These complaints concerned abuses such as conflicts of interest, rebates, double commissions, commingling of funds, and excessively long term contracts. After a survey of its membership, regulations were presented in 1938 by SAG's

Board of Directors to the membership and, after lengthy discussion within SAG and with agents' representatives, became effective in November 1939. In 1949, SAG's Agency Relations Committee reviewed the regulations and found that, although abuses still occurred, the situation had been significantly ameliorated.

For similar reasons, both AFTRA and WGA adopted comparable regulations.[16] Thus, every major entertainment union has found it necessary to regulate agents. All have focused particular attention on the problem of the agent's conflict of interest, and all prohibit agents from accepting rebates from employers, acting as employer and the like.[17]

Moreover, despite the vigorous efforts of the unions, there is a continuing need for such union regulation of agents, even in jurisdictions where the agents are regulated by state law.[18] This is clear from a Staff Report to the Federal Trade Commission by its Los Angeles Regional Office, in 1972, which stated that:

> The evidence obtained during that initial investigation indicated that thousands of people in California, and in other areas of the country, lose significant amounts of money as a result of deceptive and fraudulent practices by these so-called "agencies."[19]

Given these economic realities, the indissoluble economic interrelationship between performers and agents, and the continuing existence of agent abuses, the entertainment unions' regulation of agents constitutes a necessary and reasonable activity to protect their members' conditions of work and compensation.

---

[16] WGA Working Rule No. 23; AFTRA Rule 12(b).

[17] WGA Artists' Manager Basic Agreement of 1976 ¶¶ 6(c), 8, 1976 Rider W ¶ 5; SAG Agency Regulations Rule 16(g) Sections V, XVI, XXVI.

[18] California regulates agents. Ca. Labor Code § 1700. See, *Adams, Ray & Rosenberg* v. *William Morris Agency, Inc.*, 411 F. Supp. 403 (C.D. Ca. 1976).

[19] Staff Report to the Federal Trade Commission, *Talent and Modeling Agencies in Southern California*, p. 1, September 1972.

POINT II

EQUITY'S REGULATIONS ARE INDISTINGUISHABLE FROM THOSE IN *CARROLL* AND ARE LIKEWISE WITHIN THE LABOR EXEMPTION TO THE ANTITRUST LAWS.

A. This Court Found in *Carroll* that Regulations Similar to Those Involved Here are "Intimately Related to Wages" and Exempt from the Antitrust Laws

In *Carroll,* the AFM had established comprehensive regulations covering, *inter alia,* wages to be paid musicians, number of musicians to be employed, hours of work, restrictions on work by members outside the territory of their local, prices to be charged by orchestras employing AFM musicians, and relationships with booking agents who secure engagements for AFM members. As to these booking agents, this Court found that:

> We think also that the caterer and booking agent restrictions "are at least as intimately bound up with the subject of wages," *Oliver II, supra,* at 606, as the price floors. The District Court found that the booking agent regulations were adopted because of experience that "many booking agents charged exorbitant fees to members and booked engagements for musicians at wages which were below union scale." 241 F. Supp., at 881-882. On the basis of these findings, the District Court concluded:
>
> > "Because the activities of the booking agents here have and had a direct and substantial effect on the wages of the members of [the unions], I find that they are in an economic interrelationship with the members . . . such that the [unions] are justified in regulating their activities . . . Furthermore, I find the regulations to be reasonably related to their interest in maintaining observance of union scale wages and working conditions." 241 F. Supp., at 893.

391 U.S. at 113.

Comparing Equity's regulations to those of the AFM challenged in *Carroll* demonstrates their similarity:

AFM	Equity
Pursuant to the provisions of Federation's By-Laws, each such booking agent must enter into a standard form of license agreement with Federation under which *he agrees not to charge more than a 10% commission on steady engagements, a 15% commission on single engagements,* not to book non-union musicians, and not to book orchestras for less than union scale wages and working conditions.	Under Actors' Equity agency regulation system, agents are required to secure licenses, also known as permits or franchises, from Actors' Equity in order to represent Actors' Equity members. *Licensed agents must abide by a schedule of maximum commissions established by Actors' Equity* and must adhere to other rules designed to protect Actors' Equity members.
241 F. Supp. at 881 (emphasis added).	478 F. Supp. 496, 497-98 (emphasis added).

As in *Carroll,* the lower courts here concluded that Equity's regulations were instituted "for the purpose of protecting the wages and working conditions of its members." 478 F. Supp. at 499. The Second Circuit found here that agents, "because of industry structure, stand athwart the current of wages paid by employers to union members" and that "it is necessary or customary for union members to secure employment through agents." 622 F.2d 647, 650. See also, *Edelstein* v. *Gillmore.*

The similarity of the facts in *Carroll* and in the present case is indisputable. Indeed, the agent regulations arose out of the same abuses: misrepresentation of services; failure to provide services; and exorbitant fees for unperformed or improperly performed services.[20] However, agents are indispensable to the careers of performers.[21] Moreover, both the AFM and Equity

---

[20] *Carroll* v. *AFM,* 241 F. Supp. at 881-82; Harding, *The Revolt of the Actors,* J.A. at 312-18; Testimony of Theodore Bikel, J.A. 164, 165-66.

[21] *Carroll* v. *AFM,* 241 F. Supp. at 893; *H.A. Artists & Associates, Inc.* v. *Actors' Equity Association,* 478 F. Supp. at 497; 622 F.2d at 650.

regulations were adopted after extensive studies of the problem and possible alternatives for its solution.[22] Most importantly, the essential features of the regulations are identical:[23] members are permitted to deal only with agents who have agreed (1) to honor their fiduciary obligations by avoiding conflicts of interest, (2) not to charge excessive commissions and (3) not to book members for jobs paying less than the union minimum. In these respects, there are no material distinctions between *Carroll* and the present case.

B. Petitioners' Attempts to Distinguish *Carroll* are Both Inaccurate and Unpersuasive

Petitioners' claimed distinctions from *Carroll* are inaccurate and illusory. Contrary to petitioners' contentions, collective bargaining agreements are present in both *Carroll* and the present case. The AFM did not limit its regulation of agents to club dates, which involved no collective bargaining agreements. As both the District Court and the Second Circuit found in *Carroll,* the AFM set maximum commissions for steady engagements, which are generally governed by collective bargaining agreements, and for club date engagements. Both types of engagements are booked by agents. 241 F. Supp. at 881, 883-84; 372 F.2d 155, 158-59. Clearly, AFM's collective bargaining agreements in recording, television and other fields did not obviate the need for the regulation of agents, and regulation in those fields was upheld in *Carroll.* [24]

---

[22] *Carroll* v. *AFM,* 241 F. Supp. at 881-82; Harding, *The Revolt of the Actors,* J.A. at 315-18, 322-25.

[23] *Carroll* v. *AFM,* 241 F. Supp. at 881; *H.A. Artists & Associates* v. *Actors' Equity,* 478 F. Supp. at 497-98.

[24] Petitioners cannot argue that the AFM regulated agents only where there was no collective bargaining. The lower courts in *Carroll* had made clear that this licensing applied in all fields:

> The licensing agreements limit the commissions of booking agents to 10% for steady engagements and 15% for single engagements.

372 F.2d at 159; 241 F. Supp. at 881. Since collective bargaining agreements are present in the non-club date fields (391 U.S. at 104, n.6), this Court recognized that agents were regulated in fields of musical employment characterized by collective agreements.

Similarly, petitioners' assertion that *Carroll* is distinguishable because booking agents were only peripherally involved there (Pet. Br., p. 18) is untrue. Petitioners ignore the extended discussion by the District Court in *Carroll* of this "peripheral" issue. 241 F. Supp. at 881-82, 892-93. The issue was presented, briefed, argued and adjudicated by this Court.[25] 391 U.S. at 113. And the fact that theatrical agents are governed by New York State neither distinguishes *Carroll* nor provides justification to outlaw union efforts to protect their members' interests. Indeed, such state regulation of agents existed when Equity's system was created, but union regulation of agents was still found necessary in view of its ineffectuality.[26] See pp. 11-12, *supra*. Petitioners can cite no authority for the extraordinary and unsupportable proposition that otherwise lawful union activity becomes unlawful by reason of governmental attempts to cure the same evils. Unions are not foreclosed from seeking to improve safety conditions by reason of the existence of the Occupational Safety and Health Administration, from bargaining for shorter hours by reason of

---

[25] The pretrial order in *Carroll* specified "regimentation of booking agents" as one of the issues before the District Court (Appendix, *American Federation of Musicians* v. *Carroll*, Nos. 309-310, O.T. 1967, 111); plaintiffs called as witnesses eight booking agents who were not members of the AFM nor orchestra leaders, including Willard Alexander, president of one of the largest booking agencies; the trial court listed the AFM's "regulating [of] booking agents" as one of the issues to be litigated (241 F. Supp. at 886), and adjudicated the issue (*id.* at 892-93); the issue was among the questions on which this Court granted *certiorari* (Cross-Petition for Writ of *Certiorari*, No. 310, pp. 2-3, 6 (questions presented: Nos. 1, 2, 4, 20)). Petitioners' argument has been explicitly and uniformly rejected by the lower courts. *Redfield* v. *American Federation of Musicians*, Civ. 78-7530, 603 F.2d 214 (2d Cir. 1979); *Garrett* v. *American Federation of Musicians*, 78-1 (CCH) Trade Cas. ¶ 61,888 (D.S.C. 1978); *Adams, Ray & Rosenberg* v. *William Morris Agency*.

[26] As noted above (p. 11), Mr. Justice Brandeis had adverted to the ineffectiveness of state regulation of private employment agencies as early as 1917. *Adams* v. *Tanner*, 244 U.S. at 605-06. See also, *Edelstein* v. *Gillmore; Adams, Ray & Rosenberg* v. *William Morris Agency*.

federal or state regulation of hours of employment, nor from bargaining in other areas to amplify the protections afforded workers by government regulation.

Petitioners raise various other alleged factual distinctions between *Carroll* and the instant case. Pet. Br., 20-27. None deserves extended analysis. Most are merely reformulations of the points analyzed above and are also inaccurate and irrelevant:

(1) Petitioners claim that "unlike *Carroll,* where the employers paid the booking agents who in turn paid the union members, *here the producers pay the actors directly.*" Pet. Br., p. 21 (emphasis in original). Untrue. In the typical situation covered by collective bargaining agreements, the musical employers in *Carroll,* like the employers here, paid the performer, not the agent. 372 F.2d at 159; 241 F. Supp. at 876. In club dates, where it was assumed that the leader was the employer (391 U.S. at 105), the leader paid the musicians.

(2) Petitioners claim that the instant case differs from *Carroll* since there is no evidence here that theatrical agents "charged exorbitant fees." Pet. Br., 22. In fact, the District Court in *Carroll* found that the abuses that led to the adoption of the AFM regulations were eliminated by the regulations, so that exorbitant agent fees were no longer a substantial problem. 241 F. Supp. at 882, 892 ("The regulations adopted were successful."). Petitioners' attempted distinction blatantly ignores the history of the last half century and the Second Circuit's findings in *Edelstein v. Gillmore.* It is strange logic indeed to suggest that union conduct found lawful in *Edelstein* v. *Gillmore* becomes unlawful because it sought the mitigation of widespread abuses and succeeded.

Petitioners' other distinctions between *Carroll* and the present case ignore the fact that agents who are indispensable to performers do not merely "affect" their disposable income, but actually control their very access to *any* income from

performing. As a result, it is a given in the entertainment industry that discussion of the performer's ability to obtain employment and his actual income must take into consideration the agent's fiduciary obligations and commission. The performer's actual income is not merely what the employer has agreed to pay, whether scale wages or more.

Clearly, it is the danger to union members inherent in the absence of regulation that justifies union limitation on excessive commissions. The unions' success in eliminating the problem through regulation does not render the regulation itself unlawful.

POINT III

STARE DECISIS DICTATES THAT *CARROLL* NOT BE OVERRULED

A. This Court's Precedents Should Not Be Overruled Without Overwhelming Reason To Do So

Where, as here, there are no overwhelming reasons to overrule, *stare decisis* commands that precedents as direct as *Carroll* and *Edelstein* v. *Gillmore* not be scuttled. No supervening change, economic or jurisprudential, has occurred mandating the destruction of these long-standing union rules first declared lawful more than fifty years ago. As we shall show, overruling *Carroll* would unfairly prejudice those unions that have adopted and maintained agency regulations in reliance on explicit judicial approval and would bring instability and labor strife where none presently exists.

As Mr. Justice Stevens made clear only last Term:

> The doctrine of *stare decisis* imposes a severe burden on the litigant who asks us to disavow one of our precedents. For that doctrine not only plays an important role in orderly adjudication; it also serves the broader societal interests in evenhanded, consistent, and predictable appli-

> cation of legal rules. When rights have been created or modified in reliance on established rules of law, the arguments against their change have special force.

Thomas v. *Washington Gas Light Co.*,—U.S.—, 100 S. Ct. 2647, 2656 (1980) (footnotes omitted). This position has been repeatedly confirmed by the Court. Mr. Justice Harlan has stated:

> Very weighty considerations underlie the principle that courts should not lightly overrule past decisions. Among these are the desirability that the law furnish a clear guide for the conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; the importance of furthering fair and expeditious adjudication by eliminating the need to relitigate every relevant proposition in every case; and the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments. The reasons for rejecting any established rule must always be weighed against these factors.

Moragne v. *States Marine Lines, Inc.*, 398 U.S. 375, 403 (1970). See also, *e.g.*, *Helvering* v. *Hallock*, 309 U.S. 106, 119 (1940); *Edelman* v. *Jordan*, 415 U.S. 651, 671 (1974); *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting).[27]

---

[27] Justice Brandeis' maxim in *Burnet* v. *Coronado Oil & Gas* is often cited (285 U.S. at 406):

> *Stare decisis* is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. . . .This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation.

See also, *Gilman* v. *Philadelphia*, 3 Wall. (70 U.S.) 713, 724 (1866) ("it is almost as important that the law should be settled permanently, as that it should be settled correctly.").

B. Congress has Approved *Carroll*'s Construction of the Labor Exemption to the Antitrust Laws

Moreover, *Carroll* and the present case involve questions of interpretation of the Norris-La Guardia Act. "[C]onsiderations of *stare decisis* weigh heavily in the area of statutory construction, where Congress is free to change this Court's interpretation of its legislation." *Illinois Brick Co.* v. *Illinois,* 431 U.S. 720, 736 (1977) (White, J.). Congress has not hesitated in the past to correct perceived misconstructions of its statutes by the Court in this very area. Much of the development of the labor laws is the result of specific Congressional reaction to decisions by the Court which Congress considered contrary to its declared labor policy. See, *e.g., United States* v. *Hutcheson,* 312 U.S. 219, 234 (1941); *United Mine Workers of America* v. *Pennington,* 381 U.S. 657 (1965). It is critical, therefore, that in the twelve years since *Carroll,* Congress has shown no interest in overruling that decision.

C. Overruling *Carroll* Would Violate the Core Principles of *Stare Decisis* and Would Disrupt Industry Practices Adopted and Maintained in Reliance Upon Judicial Approval

No supervening decision of this or any other court casts doubt on the continuing validity of *Carroll.* On the other hand, ignoring the Court's many precedents and overruling *Carroll* would cause the very disruptions sought to be prevented by *stare decisis.* To overrule *Carroll* and invalidate the entertainment unions' long-standing agent regulatory systems at this late date would throw the industry into chaos and leave a vacuum in which agent abuses may once again flourish unhindered.[28] Nothing has occurred in the years since *Carroll* to warrant such a drastic upheaval of the entertainment industry. The lower courts have uniformly followed *Carroll* and have experienced no difficulty in doing so.[29]

---

[28] Testimony of Theodore Bikel, J.A. at 171-72.

[29] See, *e.g., Redfield* v. *AFM:*

The central issue raised by this appeal is whether the activities of

Overruling *Carroll* would violate the core principles of *stare decisis* and would have serious detrimental impact. First, as we have shown above (pp. 12-14), the *amici* adopted agency regulations subsequent to and in reliance upon the favorable authority of *Edelstein* v. *Gillmore*. This Court's decision in *Carroll* corroborated the propriety of the regulations and made it clear that these unions could maintain those regulations without legal entanglement. Subjecting these unions now to antitrust damage suits, including treble damage awards, after fifty years of judicial approval, would be palpably unfair. Second, reversal of *Carroll* would foster litigation in an area previously free of legal controversy. Eager plaintiffs would institute suits seeking the financial windfalls provided by treble damage awards. The unions would be compelled to litigate extensively in the hopes of preserving these vital membership interests. Third, labor strife could ensue as unions seek to replace the existing system of obtaining jobs through agents with contractual hiring procedures. Those traditional union responses to unfair employer hiring practices would probably be strongly resisted by employers loath to abandon the advantages of the present hiring system.[30] Similarly, the unions might

---

> the AFM in its relationships with booking agents such as plaintiff fall within this exemption.
>
> * * *
>
> As with the orchestra leaders, the regulations here were instituted unilaterally by the union and voluntarily acquiesced in by plaintiff. Clearly there is an economic relationship between the booking agent and the musician. The agent obtains a commission based on the contract that he secures for the musician. Moreover, the purpose of the restrictions is aimed at protecting the musicians from booking agents who may charge exorbitant fees or contract for work at lower than going rates.

Slip Op. at 1-2. See also, *e.g.*, *Adams, Ray & Rosenberg* v. *William Morris Agency; Garrett* v. *AFM*.

[30] Union demands for hiring halls and other contractual hiring practices are a mandatory subject of bargaining under the National Labor Relations Act and strikes to obtain such hiring procedures would be lawful, protected activity. See, *e.g.*, *Houston Chapter, Associated General Contractors,* 143 N.L.R.B. 409 (1963), *enforced,*

attempt to preempt the agents' negotiating function in order to spare their members that expense and to ensure the preservation of union wage scales.

D. Overruling *Carroll* Will Severely Undermine the Court's Consistent Line of Authority on this Issue

Adherence to *stare decisis* is especially compelling since *Carroll* is consistent with a clear line of decisions by this Court. 391 U.S. at 106. The Court has repeatedly declared that the Clayton and Norris-La Guardia Acts were intended to foreclose judicial scrutiny of union activities undertaken in self-interest. Under the standards set forth by these precedents, Equity's regulation of agents is properly exempt from the antitrust laws. These standards have not been questioned in any way by Congress, and *Carroll* cannot be overruled without doing violence to these precedents and the standards they articulate.

This Court declared in *United States* v. *Hutcheson* that the Norris-La Guardia Act requires that:

> So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means.

312 U.S. at 232 (footnote omitted). See also, *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, 501, 506, 508 (1940); *Allen Bradley Co.* v. *Local Union No. 3, International Brotherhood of Electrical Workers,* 325 U.S. 797, 808 (1945); *Local 24, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO* v. *Oliver,* 358 U.S. 283, 291-94 (1959); *Los Angeles Meat & Provision Drivers Union* v. *United*

---

349 F.2d 449 (5th Cir. 1965), *cert. denied,* 382 U.S. 1026 (1966); *cf., Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *National Labor Relations Board,* 365 U.S. 667, 672-73, 676 (1961).

States, 371 U.S. 94, 97-98 (1962); *United Mine Workers of America* v. *Pennington.*

Mr. Justice White summarized these precedents clearly in *Local Union No. 189, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO* v. *Jewel Tea Co., Inc.,* 381 U.S. 676, 690 (1965): the "crucial determinant is not the form of the agreement—*e.g.,* prices or wages—but its relative impact on the product market and the interests of union members."

Thus, only when a union joins a business conspiracy or combines with business interests to restrain competition may its activities be challenged, and Equity's regulation of agents does not restrain competition.

The entertainment unions have not sought to restrain competition among agents and clearly have no economic incentive to do so. Indeed, the only groups which clearly benefit from the systems are the unions' memberships. The interests of the unions' members are best served by robust competition among agents, and there is no shred of evidence in this or any other case that the entertainment unions have abandoned those interests. Finally, experience has shown that regulation of agents is the effective method of curbing agent abuses.

E. Petitioners Offer No Reason to Overrule *Carroll*

Petitioners proffer no reason for the Court to accept their invitation to overrule *Carroll* and ignore the principles of *stare decisis.* Pet. Br., 29-30. None exists. That invitation must therefore be rejected, for:

> We must respect the solemn decisions of our predecessors and associates, as we may wish that those who succeed us should respect ours, or the supreme law of the land, so far as depends on judicial interpretation, will change with the change of judges.

Ex-parte Crane, 5 Pet. (30 U.S.) 190, 202-03 (1831).

CONCLUSION

It is respectfully submitted that the decisions of the District Court and the Court of Appeals should be affirmed.

Dated: February 6, 1981

Respectfully submitted,

DAVID ALTER
(Counsel of Record)
JOSEPH FERRARO
YEE WAH CHIN
SHEA & GOULD
330 Madison Avenue
New York, New York 10017
(212) 661-3200

Attorneys for Screen Actors Guild, Inc., as *Amicus Curiae*

MORTIMER BECKER
BECKER & LONDON
15 Columbus Circle
New York, New York 10023
(212) 541-7070

HENRY KAISER
RONALD ROSENBERG
VAN ARKEL, KAISER & ROSENBERG
1828 L Street, N.W., Suite 701
Washington, D.C. 20036
(202) 466-8400

Attorneys for American Federation of Television and Radio Artists, as *Amicus Curiae*

PAUL P. SELVIN
SELVIN AND WEINER, P.C.
1900 Avenue of the Stars, Suite 2400
Los Angeles, California 90067
(213) 277-1555

Attorneys for Writers Guild of America, West, Inc. and Writers Guild of America, East, Inc., as *Amici Curiae*